

REMARKS

Applicant acknowledges electing claims 1-3 in its response dated August 25, 2008 to the restriction requirement of July 23, 2008. Claim 5 was amended simultaneously with the election of claims 1-3 to satisfy the unity of invention requirement with the objective of making claim 5 eligible for prosecution along with claims 1-3. Claim 5 is a dependent claim which depends from claim 1 or 2 and since claims 1 and 2 have been amended, claim 5 is now believed to satisfy PCT Rule 13.1. Accordingly, claim 5 should be reconsidered, in that if claim 5 falls within a single general inventive concept under PCT Rule 13.1, it should not be subject to withdrawal under 37 CFR 1.142(v). The issue regarding claim 5 was not part of the election without traverse. Accordingly, the withdrawal of claim 5 should be reconsidered.

Applicant will file a supplemental Information Disclosure Statement to make of record the references cited in the International Search Report as suggested by the Examiner.

Applicant has also reviewed the specification and has not found any errors which require further correction.

The rejection of claims 1 and 2 under 35 USC 102(b) or in the alternative under 35 USC 103(a) based upon the teaching of Kim et al (USP 6,552,080) is respectfully traversed.

Claim 1 has been further amended to limit the adjuvant in paragraph (ii) to a nonionic surfactant selected from the group consisting of a polyoxyethylene-based nonionic surfactant consisting of: a lipophilic moiety being an aliphatic alcohol, a fatty acid or a triacyl glyceride, containing at least 8 carbon atoms, and a hydrophilic moiety

being a polyoxyethylene having 3 to 25 oxyethylene repeating units; ethoxylated castor oil; polyoxyethylene-polyoxypropylene block copolymer; and a mixture thereof; an anionic surfactant selected from the group consisting of sodium dioctyl sulfosuccinate, sodium dodecylbenzenesulfonate and a mixture thereof; and a fatty acid alkyl ester.

Moreover, claim 2 has also been amended so that "tween 20" is clearly excluded from the subject matter of both claims 1 and 2 respectively.

As now claimed, the subject invention resides in combining the subject adjuvant recited in claim 1 such as polyoxyethylene octyl ether and polyoxyethylene lauryl ether, with an agrochemical of formula (I) or formula (II). This has been proved very effective for protecting crops against plant diseases, increasing the foliar uptake and spray deposition of the fungicidal compounds to crop plants and enhancing the curative activity against plant disease (see page 2, lines 17 to 21 and 30 to 34 of the subject specification). The improved curative activity of the subject invention is based on the claimed adjuvant which increases the foliar uptake and spray deposition of the fungicidal compounds to crop plants. The enhanced curative activity in affected crop plants was unexpected.

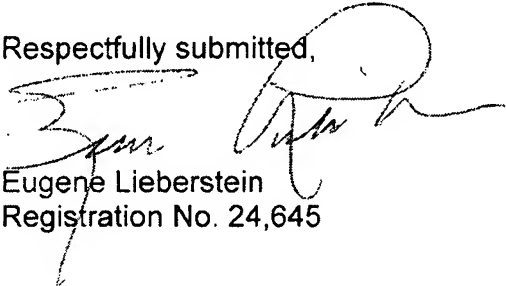
Contrary to the subject invention, the cited reference Kim et al discloses only the agrochemicals of formula (I) or (II) combined with tween20 (polyoxyethylenesorbitan monolaurate). However, since tween20 has sorbitan between polyoxyethylene and lauric acid, it is distinguishable from the polyoxyethylene-based adjuvants of the subject invention consisting of (i) an aliphatic acid, a fatty acid or a triacyl glyceride, and (ii) a polyoxyethylene.

As shown in Tables 23, 24, 28 and 29 of the subject specification, the subject fungicidal composition has excellent curative activity in various affected crops as compared with the control fungicidal composition which does not contain the subject

adjuvant. Accordingly, the subject fungicidal composition is clearly distinguishable from the cited reference Kim et al based upon its unexpectedly remarkable effect and enhanced curative activity against plant disease as a result of which it is neither anticipated nor obvious from the teaching of Kim et al. For all of the above reasons, and the rejection of claims 1 and 2, should be withdrawn.

Reconsideration and allowance of claims 1, 2 and 3 is respectfully solicited.

Respectfully submitted,


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